IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 452 of 2002.

Decided on: 11.06.2007.

Roshan Lal.

… … … Petitioner.

Versus

Union of India and Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner: **Mr. Suneet Goel, Advocate.**

For the Respondents: **Ms. Shilpa Sood, Central Government Counsel.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Army in ASC (Supply) on 7.5.1949. He was invalided out of service with effect from 23rd October, 1959 due to Pulmonary Tuberculosis. The invaliding Medical Board has assessed his disability at 100% and he was granted disability pension at the rate of Rs.35/- per month with effect from 24th March, 1959 to 22nd October, 1960 vide CDA (Pensions) Pension Payment Order No.D/4594/60. He was

---

Whether reporters of local papers may be allowed to see the judgment? No.

brought before the re-survey medical board from time to time and granted disability pension as under:-

	Period	% assessed by Medical Board	% assessed by CDA (P).
(a)	23 Oct 60 to 28 Dec 60	100%	100%
(b)	29 Dec 60 to 26 Oct 62	80%	80%
(c)	27 Oct 62 to 12 Nov 63	50%	50%
(d)	13 Nov 63 to 09 Sep 66	40%	40%
(e)	10 Sep 66 to 12 May 95	20%	20%

He was brought before re-survey medical board on 21st January, 1995 and his disability was assessed at 20% for 10 years. Despite his disability being assessed at 20% for 10 years by re-survey medical board on 21st January, 1995, his claim for disability pension was rejected vide a communication dated 6th April, 1995. He had preferred an appeal against order dated 6th April, 1995 on 29th May, 1995. The appeal was rejected on 8th September, 1997.

Mr. Suneet Goel has strenuously argued that his disability has been assessed at 20% for 10 years by the re-survey medical board on21st January, 1995 and thus, his case could not be rejected vide letter dated 30th March, 1995 by PCDA (Pensions) Allahabad who re-assessed the disability at less than 20% (11-14%). Ms. Shilpa Sood had supported the order dated 6th April, 1995 and the appellate order dated 8th September, 1997.

I have heard the parties and perused the record.

The petitioner was enrolled in the Army on 7th May, 1949 and invalided out of service with effect from 23rd October, 1959 due to Pulmonary Tuberculosis. The invaliding Medical Board had

assessed his disability at 100%. The disability of the petitioner was assessed at 20% for 10 years by the re-survey medical board on 21st January, 1995. This assessment has been done by a validly constituted medical board. The PCDA (Pensions), Allahabad could not reject the case of the petitioner by re-assessing his disability at less than 20% (11-14%) vide letter dated 30th March, 1995. The medical board alone is competent authority with requisite expertise to assess and re-assess the disability of an individual. The PCDA (Pensions), Allahabad lacks the expertise to re-assess the disability.

Ms. Shilpa Sood submits that an individual who was in receipt of disability pension may be granted pension or gratuity when the accepted degree of his disablement is re-assessed at less than 20%, but the individual had rendered more than 10 years of service is entitled to special rate of pension as per Rule 167 read with Rule 165. Ms. Shilpa Sood further submitted that the case of petitioner had been referred to PCDA (Pensions) Allahabad vide ASC Records (Supply) letter dated 30th December, 2001. The out-come of the recommendation has not been placed on record till date. Mr. Suneet Goel has placed on record the copy of letter dated 23rd December, 1992 whereby it is mentioned that the individuals invalided out of service before 1.3.1968 with 10 years or more service are entitled for disability pension. On the basis of letter dated 23rd December, 1992 he submitted that his case is covered under these instructions also. The petitioner's appeal has also not been decide ed in accordance with law. The

appellate authority had not taken into consideration that his disability was assessed by the re-survey medical board on 21st January, 1995 at 20% for 10 years and the re-assessment done by the PCDA (Pensions) Allahabad was not in accordance with law.

The upshot of the above discussion is that the petitioner is entitled to disability pension with effect from 12th May, 1995. The PCDA (Pensions) Allahabad had wrongly re-assessed the disability of the petitioner at less than 20% despite the re-survey medical board had assessed the same at 20% for 10 years. The case of the petitioner is covered under the letter dated 23rd December, 1992 since he had put in more than 10 years service. The respondents have not restored the disability pension to the petitioner despite the case having been referred to PCDA (Pensions) Allahabad on 30th December, 2001.

Consequently, this petition is allowed. The Annexures P-2, dated 6th April, 1995 and P-4, order dated 8th September, 1997 are quashed and set aside. The petitioner is held entitled to disability pension with effect from 12th May, 1995 onwards with interest at the rate of 9% per annum. The respondents are directed to work out the monetary benefits payable to the petitioner within a period of eight weeks from today. There shall be no order as to costs.

June 11, 2007 **(Rajiv Sharma)**
(sck). **Judge**